

(a) **Estimated amount of Plaintiff(s)' Claims:**

☐ Equitable Relief
☐ Other (if so, specify) _____

(b) **Estimated amount of Defendant(s)' Counterclaim/Cross-Claims:**

☐ Less than \$100,000
☐ Between \$100,000 and \$999,999
☐ Between \$1,000,000 and \$49,999,999
☐ More than \$50,000,000
☐ Equitable Relief
☐ Other (if so, specify) _____

(2) **Competence.** Counsel certify that they are sufficiently knowledgeable in matters relating to their clients' technological systems to discuss competently issues relating to electronic discovery, or have involved someone competent to address these issues on their behalf.

(3) **Meet and Confer.** Pursuant to Fed. R. Civ. P. 26(f), counsel are required to meet and confer regarding certain matters relating to electronic discovery before the Initial Pretrial Conference (the Rule 16 Conference). Counsel hereby certify that they have met and conferred to discuss these issues.

Date(s) of parties' meet-and-confer conference(s): September 30, 2022 and October 18, 2022

(4) **Unresolved Issues:** After the meet-and-confer conference(s) taking place on the aforementioned date(s), the following issues remain outstanding and/or require court intervention: ☐ Preservation; ☐ Search and Review; ☐ Source(s) of Production; ☐ Form(s) of Production; ☐ Identification or Logging of Privileged Material; ☐ Inadvertent Production of Privileged Material; ☐ Cost Allocation; and/or ☐ Other (if so, specify) _____. To the extent specific details are needed about one or more issues in dispute, describe briefly below.

None. The parties agree to meet and confer about ESI search terms and to produce responsive, non-privileged documents with .dat and .opt load files, images files in .tif format, extracted text files in .txt format, and spreadsheets, videos, and audio files in native format with a placeholder in the main production. Each party will bear its own costs in review and production, and the parties will enter a confidentiality and claw-back order. Privileged materials will be identified on a privilege log in accordance with the local rules

As set forth below, to date, the parties have addressed the following issues:

(5) Preservation.

- (a) The parties have discussed the obligation to preserve potentially relevant electronically stored information and agree to the following scope and methods for preservation, including but not limited to: retention of electronic data and implementation of a data preservation plan; identification of potentially relevant data; disclosure of the programs and manner in which the data is maintained; identification of computer system(s) utilized; and identification of the individual(s) responsible for data preservation, etc.

Plaintiff(s):

Plaintiff's counsel has advised the named plaintiffs of their
preservation obligations in email.

We have also conducted collections with both plaintiffs of potentially
relevant ESI and hard copy materials.

Defendant(s):

Defendant has put in place a litigation hold that has been issued
to relevant custodians, including company IT professionals responsible
for data maintenance. The litigation hold applies to hard copy materials
and ESI, including custodian email boxes.

- (b) State the extent to which the parties have disclosed or have agreed to disclose the dates, contents, and/or recipients of "litigation hold" communications.

The parties do not agree to produce the dates, contents, and/or recipients
of litigation hold communications. Those communications are protected
by the attorney-client privilege and the work product protection.

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- (c) The parties anticipate the need for judicial intervention regarding the following issues concerning the duty to preserve, the scope, or the method(s) of preserving electronically stored Information:

No judicial intervention is required at this time.

(6) Search and Review

- (a) The parties have discussed methodologies or protocols for the search and review of electronically stored information, as well as the disclosure of techniques to be used. Some of the approaches that may be considered include: the use and exchange of keyword search lists, "hit reports," and/or responsiveness rates; concept search; machine learning, or other advanced analytical tools; limitations on the fields or file types to be searched; date restrictions; limitations on whether back-up, archival, legacy, or deleted electronically stored information will be searched; testing; sampling; etc. To the extent the parties have reached agreement as to search and review methods, provide details below:

Plaintiff(s):

Plaintiffs have agreed to produce responsive ESI and hard copy

documents in the agreed upon format. To the extent necessary,

lead plaintiffs have agreed to cooperate in the identification of

search terms and will produce a hit report to for the sake of

narrowing the scope of reviewable documents.

Defendant(s):

Defendant will supply a hit report identifying the search terms to be

applied and the number of reviewable documents for each term.

- (b) The parties anticipate the need for judicial Intervention regarding the following issues concerning the search and review of electronically stored information:

No judicial intervention is required at this time.

(7) Production

- (a) Source(s) of Electronically Stored Information. The parties anticipate that discovery may occur from one or more of the following potential source(s) of electronically stored information [e.g., email, word processing documents, spreadsheets, presentations, databases, instant messages, web sites, blogs, social media, ephemeral data, etc.]:

Plaintiff(s):

email with attachments and text messages

Defendant(s):

email (including attachments), documents, spreadsheets

- (b) Limitations on Production. The parties have discussed factors relating to the scope of production, including but not limited to: (i) number of custodians; (ii) identity of custodians; (iii) date ranges for which potentially relevant data will be drawn; (iv) locations of data; (v) timing of productions (including phased discovery or rolling productions); and (vi) electronically stored information in the custody or control of non-parties. To the extent the parties have reached agreements related to any of these factors, describe below:

Plaintiff(s):

Plaintiffs will produce responsive hard copy documents and ESI
for the two Plaintiffs. In event of certification, Plaintiff will seek
to meet and confer about the possibility of expanding
the scope of search and production to a mutually agreed upon
number of class member custodians. Plaintiff intend to seek
production of furlough and WARN notice communications including
email envelope and header metadata.

Defendant(s):

Defendant will search the emails boxes of the custodians listed in
their Rule 26(a) initial disclosures applying a date range of March 1, 2020 to
September 30, 2020 and a list of search terms to be agreed on by the parties.

- (c) Form(s) of Production:

- (1) The parties have readied the following agreements regarding the form(s) of productions:

Plaintiff(s):

Plaintiffs will produce ESI in the same format as received.

Defendant(s):

- Documents will be produced with .dat and .opt load files.
- Image files will be produced in .tif format
- Extracted text files will be produced in .txt format
- Spreadsheets, video, and audio files will be produced in native formats with a placeholder in the main production.
- All ESI productions will include metadata.

- (2) Please specify any exceptions to the form(s) of production indicated above (e.g., word processing documents in TIFF with load files, but spreadsheets in native form):

N/A

- (3) The parties anticipate the need for judicial intervention regarding the following issues concerning the form(s) of production:

N/A

(d) Privileged Material.

- (1) Identification. The parties have agreed to the following method(s) for the identification (including the logging, if any, or alternatively, the disclosure of the number of documents withheld), and the redaction of privileged documents:

Production of a privilege log consistent with local rules.

- (2) Inadvertent Production / Claw-Back Agreements. Pursuant to Fed R. Civ. Proc. 26(b)(5) and F.R.E. 502(e), the parties have agreed to the following concerning the inadvertent production of privileged documents (e.g. “quick-peek” agreements, on-site examinations, non-waiver agreements or orders pursuant to F.R.E. 502(d), etc.):

The parties will enter into a separate confidentiality and claw-back agreement

- (3) The parties have discussed a 502(d) Order. Yes X; No _

The provisions of any such proposed Order shall be set forth in a separate document and presented to the Court for its consideration.

- (e) Cost of Production. The parties have analyzed their client’s data repositories and have estimated the costs associated with the production of electronically stored

information. The factors and components underlying these costs are estimated as follows:

(1) Costs:

Plaintiff(s):

Plaintiffs will bear the cost of uploading, reviewing and producing responsive ESI for lead plaintiffs.

Defendant(s):

Defendant will bear the costs of uploading, reviewing, and producing responsive ESI.

(2) Cost Allocation. The parties have considered cost-shifting or cost-sharing and have reached the following agreements, if any:

N/A

- (3) Cost Savings. The parties have considered cost-saving measures, such as the use of a common electronic discovery vendor or a shared document repository, and have reached the following agreements, if any:

N/A

- (f) The parties anticipate the need for judicial intervention regarding the following issues concerning the production of electronically stored information:

N/A

(8) Other Issues:

In the event of certification, Plaintiffs will seek to meet and confer with opposing counsel about expanding the scope of email search and review to a mutually agreeable number of class member custodians. Plaintiff are specifically interested in discovery of furlough and WARN Act notices communications similar to those received by the Lead Plaintiffs.

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The preceding constitutes the agreement(s) reached, and disputes existing, (if any) between the parties to certain matters concerning electronic discovery as of this date. To the extent additional agreements are reached, modifications are necessary, or disputes are identified, they will be outlined in subsequent submissions or agreements and promptly presented to the Court.

Party: Plaintiffs

By: /s/ Christopher Q. Davis

Party: _____

By: _____

Party: Hornblower

By: /s/ Shawn Matthew Clark

Party: _____

By: _____

Party: _____

By: _____

The next scheduled meet-and-confer conference to address electronic discovery issues, including the status of electronic discovery and any issues or disputes that have arisen since the last conference or Order, shall take place on: 11/18/2022 .

The next scheduled conference with the Court for purposes of updating the Court on electronic discovery issues has been scheduled for . Additional conferences, or written

status reports, shall be set every 3 to 4 weeks, as determined by the parties and the Court, based on the complexity of the issues at hand. An agenda should be submitted to the Court four (4) days before such conference indicating the issues to be raised by the parties. The parties may jointly seek to adjourn the conference with the Court by telephone call 48 hours in advance of a scheduled conference, if the parties agree that there are no issues requiring Court intervention.

Additional Instructions or Orders, if any:

Dated: October 20, 2022

SO ORDERED.



Ona T. Wang
United States Magistrate Judge